

**Town of Milford  
Zoning Board of Adjustment Minutes  
July 18, 2013  
Bruce Merrill  
Case #2013-12  
Variance**

Present: Fletcher Seagroves, Chairman  
Zach Tripp  
Laura Horning  
Paul Butler  
Kevin Taylor

Katherine Bauer – Board of Selectmen’s representative

Absent: Mike Thornton - Alternate

Secretary: Peg Ouellette

The applicant, Bruce Merrill, owner of Map 29, Lot 69, 71 Union St, in the Residence “A” District, is requesting a variance from Article V, Section 5.02.4.A, to allow a subdivision creating one new residential lot, of no less than 15,000SF, that does not have frontage on a Class V or better road.

**MINUTES APPROVED 8/1/13**

Fletcher Seagroves, Chairman, opened the meeting and informed all of the procedures for the meeting. He read the notice of hearing into the record, The list of abutters was read. Abutters William B. and Diane H. Fuller of 8 Merrill Court were present. Bruce Merrill, owner of 71 Union Street, was present along with Attorney Will Sullivan as his representative. Fletcher Seagroves then invited the applicant forward to present his case.

Atty. Sullivan, acting on behalf of the applicant, gave a brief description of what the applicant would like to do, saying the property is approximately 1 ½ acres with 110 ft frontage on Union St. The required minimum square footage for a lot is 15,000SF. Applicant is asking for a variance to cut the lot approximately in half and create a lot that will be in excess of 15,000SF; but access to that lot is via a private road that has been there for decades. It is a non-Class V road. Mr. Merrill is requesting permission to create a lot without the frontage required by the ordinance.

F. Seagroves asked for questions from the Board.

Z. Tripp asked Atty. Sullivan to verify the new lot plus the old lot with the house would exceed 15,000SF and both have frontage required by the ordinance but the new lot will not be on the road.

Atty. Sullivan stated the new one will have no road frontage. Referring to the plan, the current lot has 110 feet on Union St. The lot being created would be on Merrill Court.

Z. Tripp inquired if the frontage on Merrill Ct. would still exceed the frontage requirement if there was a Class V road.

Atty. Sullivan said, looking at the map – he felt the tax map was not quite accurate and thought the road ran along the whole side of the lot – it is 504 ft. on Merrill Ct.

F. Seagroves asked if the new structure would have town water and sewer.

Atty. Sullivan said he was sure it would.

F. Seagroves stated that with town water and sewer they need 100ft; without it they need 150ft., so if you cut it in half..

Atty. Sullivan either one of those would suffice.

Z. Tripp said, looking at the town map, it appeared the new structure would meet the setbacks?

Atty. Sullivan said it would well exceed the setback and was not an issue.

F. Seagroves asked if this was a private road.

Atty. Sullivan said yes. He thought it had been there many decades. Lots 29-66, 29-66-1 all rely on Merrill Ct. for access.

F. Seagroves asked if those lots have deeded right of way.

Atty. Sullivan responded they did.

F. Seagroves asked if the property in question would have deeded right of way.

Atty. Sullivan said it would; when a deed is created it can be conveyed together with access over Merrill Ct.

F. Seagroves asked for further questions from the Board. There were none. He opened the meeting for public comment.

There were no public comments, so the Chair closed the public portion of the meeting and asked Atty. Sullivan to read the application into the record.

Atty. Sullivan read the application into the record:

A Variance is requested from Article V Section 5.02.4.A of the Zoning Ordinance to permit: the subdivision of a new residential lot of no less than 15,000SF that does not have frontage on a Class V or better road.

**1. Granting the variance would not be contrary to the public interest because:**

The property is large enough in area to permit an additional building lot that complies with the zoning ordinance except for frontage. Because there will be access off Merrill Court this variance will not be contrary to the public interest.

**2. The use is not contrary to the spirit of the ordinance because:**

If this variance is granted the spirit of the ordinance will be observed because the proposed new lot will meet the intent of the Residence A district which is low density residential primarily single-family residences on individual lots.

**3. Granting the variance would do substantial justice because:**

It would allow the owner to use his property in a reasonable and permitted manner with no negative impacts on the abutters or surrounding neighborhood.

**4. The proposed use would not diminish surrounding property values:**

Allowing the creation of one new single-family lot is in character with the surrounding properties and is allowed by zoning; which is intended to maintain the value of surrounding properties by allowing compatible uses.

**5. Denial of the variance would result in unnecessary hardship.**

**A). “Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:**

**i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:**

The property is different from others in the neighborhood because of its size, and undeveloped buildable area that can only be accessed off Merrill Court, a private drive.  
**and;**

**ii).The proposed use is a reasonable one because:**

It is similar to what currently exists in the neighborhood.

**B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:**

The rectangular shape of the lot, with limited frontage on Union Street creates an inability to subdivide without a variance for frontage. Merrill Court, a private drive, will provide adequate access.

L. Horning asked how long Lot 61 and 66 had been in existence.

Bruce Merrill, the applicant, came forward to respond.

L. Horning asked how long Lots 29-61-1 and 29-66 been there and how long the structures have been on them.

B. Merrill said Lot 29-66 has been there over 100 years; and 29-66-1, he thought approximately 30 years.

F. Seagroves asked for any further questions. There were none, so they moved on to the discussion of the criteria.

**1. Would granting the variance not be contrary to the public interest?**

L. Horning said yes, she believed granting the variance would not be contrary to the public interest. She didn't see the public gaining anything or not gaining anything by granting the variance.

K. Taylor said it is not contrary to the public interest.

Z. Tripp said yes. Merrill Ct. is a pre-existing road and adding another lot would not do harm or alter the essential character of the neighborhood.

P. Butler agreed it would not be contrary to the public interest.

F. Seagroves said yes, he didn't see where the public would gain from denying it.

**2. Could the variance be granted without violating the spirit of the ordinance?**

K. Taylor - yes. It could be granted without violating the spirit of the ordinance.

Z. Tripp said the new lot maintains lot size for Residence A. If Merrill Ct. were a Class V road, it would have proper frontage. There appeared to be plenty of room to maintain setbacks. Since the lot that was pre-existing with lots already off it, he did not believe that being on a non-Class V road would threaten the health, safety or general welfare.

L. Horning agreed, saying that was her reason for asking how long the structures had been there. One has been there 100 years and has not presented any issue to the health, welfare or safety to the public. Neither have any of the other existing lots. Town services are there, so there are adequate facilities there to manage the property once the lot goes in. The spirit of the ordinance is being observed.

P. Butler agreed, having nothing to add to what had been said.

F. Seagroves agreed. He referred to the handbook, and said he did not see any threat to health, safety or general welfare of the community. It is a narrow road but it is tarred and appears well-kept up.

**3. Would granting the variance do substantial justice?**

Z. Tripp –yes. He didn't see the public would gain to deny it.

K. Taylor – yes. As Z. Tripp said, there would be nothing to gain.

L. Horning – yes. Agreed that granting would do substantial justice. There would be no injustice to the public by granting it.

P. Butler – yes. Agreed the variance would do substantial justice. It is going to fit in with the rest of the neighborhood.

F. Seagroves – yes. Agreed. It would do substantial justice. He didn't see where any loss to the individual was outweighed by gain to the public.

**4.. Could the variance be granted without diminishing the value of abutting property?**

P. Butler – yes. It conforms with the rest of the neighborhood. There seems to be enough space for all the setbacks.

K. Taylor- yes. It would, without diminishing. As P. Butler stated, all the other zoning requirements have been met except for the setback.

L. Horning – yes. Agreed. Putting a brand-new house on the vacant lot would add to the property values. She felt it would not diminish property values at all and would, in fact, add to them.

Z. Tripp – yes. Agreed with the others. The surrounding properties are on a non-Class V road so it would not have adverse effect.

F. Seagroves – yes. Agreed. He did not see it would diminish value of abutting properties.

**5. Would denial of the variance result in unnecessary hardship taking the following into consideration:**

**A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;**  
**ii. The proposed use is a reasonable one.**

**B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

Z. Tripp – yes. From the handbook, all zoning is a hardship that is shared equally by property owners. In this instance the hardship of building on non-Class V road, the surrounding properties do not share that. Not granting would be a hardship because it is not a restriction that other properties share. Regarding reasonable use, preventing the subdivision based upon the road not being Class V would prevent any reasonable use of the

property given surrounding properties are on a non-Class V road also. Regarding substantial justice, he felt that granting would not frustrate the purpose of the ordinance and full application of the ordinance would not fulfill that valid purpose regarding that non-Class V road is already populated.

L. Horning – yes. Agreed. Looking at the tax map, the parcel is for all intents and purposes landlocked. That creates a substantial hardship for the property owner in her opinion. It meets or is very close to meeting all the zoning criteria in the first place, had it not been in the position it is. She believed the geographic location created a hardship for the owners and did not believe that strict conformance in this case, forcing him to keep an empty lot and pay taxes on it, is a reasonable one. She did not believe there was fair and substantial relationship between the ordinance and the general public purposes in this case.

K. Taylor – yes. Agreed with the others. The property could be landlocked;;it is not, but it has met all the other requirements except for the frontage. It would be a hardship for the owner to deny.

P. Butler – yes. He had nothing to add but agreed it would result in unnecessary hardship.

F. Seagroves yes. Agreed. The unique conditions of the property – it meets everything but the frontage. The frontage is there, but is on a private road. Being it is a private road

F. Seagroves called for a vote.

**1. Would granting the variance not be contrary to the public interest?**

L. Horning – yes Z. Tripp – yes P. Butler – yes K. Taylor – yes F. Seagroves – yes

**2. Could the variance be granted without violating the spirit of the ordinance?**

Z. Tripp – yes P. Butler – yes K. Taylor – yes L. Horning – yes F. Seagroves – yes

**3. Would granting the variance do substantial justice?**

P. Butler – yes K. Taylor – yes Z. Tripp – yes L. Horning - yes F. Seagroves – yes

**4. Could the variance be granted without diminishing the value of abutting property?**

K. Taylor – yes P. Butler – yes Z. Tripp – yes L. Horning – yes F. Seagroves –yes

**5. Would denial of the variance result in unnecessary hardship taking the following into consideration:**

**A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;**

**ii. The proposed use is a reasonable one.**

**B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

L. Horning – yes Z. Tripp – yes P. Butler – yes K. Taylor –yes F. Seagroves - yes

F. Seagroves asked if there was a motion to approve case # 2013-12.

Z. Tripp made the motion to approve Case #2013-12.

L. Horning seconded the motion.

**Final Vote**

**L. Horning – yes, Z. Tripp – yes, P. Butler - yes, K. Taylor – yes, F. Seagroves – yes**

Case #2013-12 was approved by a unanimous vote.

F. Seagroves reminded the applicant, Bruce Merrill, and his representative, Atty. Sullivan, of the thirty (30) day appeal period and that applicant will be going to the Planning Board.